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22 UNITED STATES DISTRICT COURT

23 DISTRICT OF ARIZONA

24 IN RE: Bard IVC Filters Products Liability
Litigation,

No. 2:15-MD-02641-DGC

**THE PARTIES' JOINT STATUS
REPORT FOR THE FEBRUARY 1,
2019, CASE MANAGEMENT
CONFERENCE**

1 In accordance with the Court's January 10, 2019 Minute Entry [Doc. 14385], the
 2 Parties hereby submit their Joint Status Report for the July 13, 2017 Case Management
 3 Conference.

4 **I. Tinlin**

5 The parties continue to work cooperatively to complete discovery within the
 6 parameters of the schedule agreed upon and ordered by the Court. Daubert motions and a
 7 motion for summary judgment will be filed on or before February 1, 2019, as
 8 contemplated by the scheduling order. Already pending before the Court are the
 9 Defendants' motions to strike the new opinions of Dr. McMeeking (Doc. 14016) and
 10 Dr. Muehrcke (Doc. 14015).

11 Plaintiff Debra Tinlin intends to file a Daubert motion regarding defense expert
 12 Christopher Morris, MD on Feb. 1, 2019. Also, due to scheduling issues, the parties
 13 anticipate setting the deposition of Dr. Morris sometime in mid-February. Plaintiff may
 14 need to supplement the motion after the deposition, but will meet and confer with the
 15 defense if that becomes necessary.

16 **II. The Simon Nitinol Filter ("SNF") Cases**

17 In Case Management Order No. 38 (Doc. 12853), the Court instructed the
 18 Defendants to file by November 2, 2018 "a motion with the panel on multidistrict
 19 litigation to expand this MDL to include the SNF cases or to create a new MDL including
 20 the SNF cases." The Defendants filed the motion on November 1, 2018.

21 Soon thereafter, a new SNF case was filed in a state court in Tulsa, Oklahoma.
 22 Bard removed the case to federal court based on diversity of citizenship, and then filed a
 23 notice of tag-along with the Judicial Panel on Multidistrict Litigation ("JPML"). In that
 24 notice, Bard specifically pointed out that the action would be governed by the Panel's
 25 ruling on the pending motion to expand the existing MDL or create a new one for the SNF
 26 cases.

27 The JPML then issued a Conditional Transfer Order, setting forth the typical time
 28 limitation for any party to file an objection to the transfer. When no objection was filed,

1 the JPML issued a final order transferring the case (Betty Ann Nichols) to this MDL. The
2 case was docketed in this Court. (Doc. 14102).

3 On January 2, 2019, the Panel issued an order deeming Bard's motion to be
4 "moot." As a basis for that determination, the JPML noted that 85 SNF actions had
5 previously been directly filed in the MDL; another SNF case had earlier been transferred
6 from the Central District of California to the MDL, without objection; and the Nichols
7 case had recently been transferred to the MDL from Oklahoma without objection.

8 Bard believes that the clear import of the JPML's order is that the Panel already
9 considers those cases to be part of this MDL. Bard respectfully submits that, in light of
10 that order, this Court should be free to oversee the resolution of those actions.

11 If the Court agrees, then Bard believes the first step will be to devise a leadership
12 structure on behalf of the SNF plaintiffs. The Plaintiffs' present lead counsel has
13 previously suggested the leadership team for the SNF cases may differ to some extent
14 from the current leadership. Either way, that issue needs to be resolved first. As soon as
15 the SNF leadership team is established, the parties should promptly meet and confer about
16 the following issues:

- 17 (1) What additional fact discovery, if any, needs to be undertaken regarding the
18 SNF filter;
- 19 (2) A schedule for the completion of that fact discovery (if any);
- 20 (3) A schedule for the completion of expert discovery;
- 21 (4) A schedule for any Daubert motions pertaining to experts designated to
22 testify about the SNF; and
- 23 (5) A proposal for the ultimate resolution of the cases (an abbreviated
24 bellwether process; post-discovery remands, etc.).

25 The parties stand ready to discuss these issues with the Court at the February 1
26 conference.

III. The Record on Remand for the Mature Cases

In the order suggesting the remand of the mature cases (Doc. 12534), the Court instructed the parties to furnish to the Clerk for the District of Arizona a “stipulation or designation of the contents of the record or part thereof to be remanded.” That same order then set forth directions for the Clerk’s office regarding the record to be forwarded to the transferor courts.

On October 30, 2018, the parties filed a joint stipulation regarding the record to be remanded to the transferor courts for the mature cases. (Doc. 13158). To the best of the parties’ knowledge, however, the record as stipulated has yet to be transmitted to those courts.

The parties stand ready to discuss with the Court anything they can do to facilitate that process.

IV. Report on Settlement Discussions

Bard continues to discuss potential settlement with the Plaintiffs’ Steering Committee in this MDL, as well as with other interested parties. Bard’s MDL counsel (Richard North) and settlement counsel (Russell Gaudreau, from Greenberg Traurig) most recently met with the Plaintiffs’ Steering Committee on January 24, 2019, in Irvine, California. At the February 1st case management conference, Bard would like to provide the Court with a brief report on the company’s various settlement discussions.

Respectfully submitted, this 28th day of January, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 28, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send notification of such filing to all counsel of record.

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